

James H. Power
Marie E. Larsen
HOLLAND & KNIGHT LLP
31 West 52nd Street
New York, New York 10019
Telephone: (212) 513-3200
Telefax: (212) 385-9010
james.power@hklaw.com
marie.larsen@hklaw.com

14 CV 8161

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

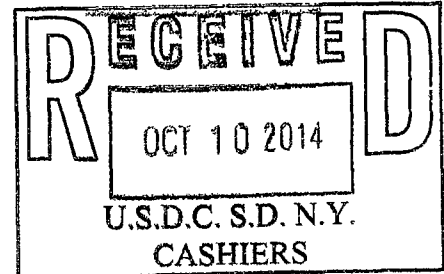
AGRICULTURE & ENERGY
CARRIERS, LTD

Petitioner,

- against -

UNITED COALS, INC

Respondent.



14 Civ ____ (____)

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ITS PETITION
FOR AN ORDER CONFIRMING AWARD OF ARBITRATION
AND DIRECTING ENTRY OF JUDGMENT**

PRELIMINARY STATEMENT

This memorandum of law is submitted in support of the petition by Agriculture & Energy Carriers, Ltd. ("AEC" or "Owner") as owner of the M/V MARDINIK (the "Vessel"), pursuant to the United States Arbitration Act, 9 U.S.C. §1, *et seq.*, for an Order confirming an arbitration award in Petitioner's favor and against Respondent United Coals, Inc. and directing the entry of judgment thereon. The Court is respectfully referred to the Verified Petition of AEC and the exhibit accompanying the Verified Petition for a full statement of the facts underlying this Petition.

ARGUMENT

**AEC IS ENTITLED TO AN ORDER CONFIRMING THE ARBITRATION
AWARD AND DIRECTING ENTRY OF JUDGMENT THEREON,
TOGETHER WITH INTEREST, COSTS AND ATTORNEYS' FEES**

The United States Arbitration Act, 9 U.S.C. §1 *et seq.*, applies to "maritime transactions," a phrase which the statute specifically defines to include charter parties, 9 U.S.C. §1. Accordingly, the present Petition arising out of a charter party falls within the coverage of the statute.

Section 9 of the Arbitration Act provides in pertinent part:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made [.]

9 U.S.C. §9.

This Petition is made in accordance with the cited provisions of 9 U.S.C. §9. Moreover, the subject charter party states:

If any dispute or difference should arise under this Charter, same to be referred to three parties in the City of New York, one to be appointed by each of the parties hereto, the third by the two so chosen, and their decision, or that of any two of them, shall be final and binding, and this agreement may, for enforcing the same, be made a rule of Court, Said three parties to be commercial shipping men.

U.S. Maritime law will govern any dispute under this Charter Party, and to the extent that such body of law needs to be supplemented, by the laws of the state of New York.

Charter, Clause 5 and 55 (annexed as Exhibit 1 to the Verified Petition).

The arbitration award having been handed down in New York County, this Court is vested with jurisdiction.

Section 13 of the Arbitration Act specifically provides for the entry of judgment in response to a Petition for an Order Confirming the Award of Arbitrators. Section 13 states in its entirety:

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

- (a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.
- (b) The award.
- (c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court which it is entered.

9 U.S.C. §13.

This Court repeatedly has used the Federal Arbitration Act to confirm an arbitration award and enter judgment thereon. *Andros Compania Maritima v. Marc Rich & Co., A.G.*, 579 F.2d 691 (2d Cir. 1978); *A/S Siljestad v. Hideca Trading, Inc.*, 541 F. Supp. 58 (S.D.N.Y. 1981), aff'd, 678 F.2d 391 (2d Cir. 1982); *Puerto Rico Maritime Shipping Auth. v. Star Lines, Ltd.*, 496 F. Supp. 14 (S.D.N.Y. 1979). Moreover, as this Court has consistently held in the context of actions asserted under the a charter party, an award of costs and attorneys' fees incurred by Petitioner in confirming the award is also proper. *See, e.g., The NICOPOLIS*, 1992 AMC 663,

666-67 (S.D.N.Y. 1991); *The SILVER LADY*, 618 F. Supp. 132, 137, 1987 AMC 2318, 2322 (S.D.N.Y. 1985).

CONCLUSION

Petitioner Agriculture & Energy Carriers, Ltd respectfully prays that this Court enter an Order herein:

(1) Confirming the aforesaid Award of the arbitration Panel and that it direct therein that judgment be entered in favor of the Petitioner against Respondent United Coals, Inc. in the amount of **\$\$2,125,521.00**;

(2) Awarding Petitioner interest at the rate of 3.25% per annum on the principal amount of the award (US\$2,046,244.42) accruing from September 10, 2014 until the date that judgment herein is entered;

(3) Awarding Petitioner interest thereafter at the rate allowed by law;

(4) Granting Petitioner its costs and attorneys' fees incurred in this bringing this proceeding; and

(5) directing that Petitioner may have such other, further or different relief as this Court may deem just and proper.

Dated: New York, New York
October 10, 2014

Respectfully submitted,

By: 
James H. Power
Marie E. Larsen
HOLLAND & KNIGHT LLP
31 West 52nd Street
New York, NY 10019
Telephone: (212) 513-3200
Facsimile: (212) 385-9010
Email: james.power@hklaw.com

marie.larsen@hklaw.com

*Counsel for Agriculture & Energy
Carriers, Ltd*

TO: United Coals, Inc.
P.O. Box 4460
Clarksburg, West Virginia 26302